

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant	:	Paul S. Enfield	)	Confirmation No.:	9260
)		
Serial No.	:	09/902,923)		
			)	Examiner:	Elaine Gort
Filed	:	July 10, 2001)		
			)	Art Unit:	3687
For	:	INFORMATION, DIRECTORY,)		
		LOCATION AND)		
		ORIENTATION SYSTEM FOR	)	Date:	August 10, 2009
		RETAIL STORES AND THE)		
		LIKE)		

APPEAL BRIEF

MAIL STOP APPEAL BRIEF – PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal is from the decision of the Examiner dated October 9, 2008, finally rejecting pending claims 17-27, which are reproduced as the Claims Appendix of this amended brief.

I. REAL PARTY IN INTEREST

The real party of interest is Paul S. Enfield.

II. RELATED APPEALS AND INTERFERENCES

There are presently no appeals or interferences known to the Appellant or the Appellant's representative, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 17-27 stand finally rejected and are the subject of this appeal. Claims 1-4 have been canceled, and claims 5-8 and 10-16 have been withdrawn from consideration by the examiner as being drawn to non-elected subject matter.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection. On April 7, 2009, Appellant submitted a Response and Submission of Declaration Prior to Appeal (hereinafter, "the Response"), along with a Third Declaration of Paul Enfield Under § 1.132. The Office issued an Advisory Action dated April 13, 2009, considering Appellant's remarks made in the Response and his Third Declaration.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

As described starting in the "Background of the Invention" section of the application, the claimed invention relates to a store facility which sells products, and more particularly to a combination of store facility and display signs that can facilitate a shopper becoming better acquainted with the overall system of the store relating to location of its products, and also better enable the shopper to find desired products with ease. The combination takes advantage of a consumer's existing awareness of various identifying features of products to facilitate this overall process of more efficient and effective shopping in the store facility.

In essence, the claimed subject matter is directed to three basic features that are the heart of the claimed invention. These are:

- i. There is claimed a **“store facility,”** which essentially is a **supermarket** (i.e., a relatively large grocery store) with a plurality of aisles with a large number of products being placed along each aisle. In most all instances, each aisle of a supermarket would have placed thereon a large number of products and these are mostly “related products” (i.e., products which would usually be found in the same or adjacent aisles in supermarkets);
- ii. There is claimed a **“display sign”** at each aisle displaying a sampling of some of the brand name products that are in that aisle along with a much larger number of “related products” that would commonly be found in that same aisle but not shown in the adjacent display sign; and
- iii. The pictorial display of the brand name products (which in many instances may already be familiar to the customer) function as a **“memory hook”** for the customer who was unable to become familiar with each of the aisles as he/she goes by these display signs.

It has also been found that not only does this system make the shopping easier for the customer, but there are economic advantages which would demonstrate that the supermarket would have increased sales, and thus increased profits. Then there is also a very **unexpected result** that even though the products displayed on these signs do not have a price reduction, the customers will generally be much more prone to buy more of the actual products shown. This is a total benefit without any costs, and discussed on pages 40 to 43 of the specification, the Second Declaration under 37 C.F.R. § 1.132 of Paul Enfield and the Third Declaration under 37 C.F.R. § 1.132 of Paul Enfield, which are attached to this brief as Exhibits A and B, respectively, and the portion of this text about the results of these studies.

The claimed subject matter will now be described with reference to the appealed independent claim:

Independent Claim 17

Claim 17 defines a combination of a plurality of display signs and a store facility (e.g., see page 27, lines 4-9, and Figures 1-5). The combination is particularly adapted to assist customers to locate products in the store facility and to obtain greater familiarity of an overall pattern of product location in the store facility (e.g., see page 11, lines 8-15).

The combination comprises a store facility having a shopping area in which store products are made available to customers in the shopping area, where the shopping area is arranged in a plurality of elongate aisles having first and second aisle end portions (e.g., see Figures 1 and 2, page 19, lines 9-13). A substantial portion of the store products located in the aisles are brand name products that include one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products (e.g., see page 19, lines 14 to page 23, line 5).

The store products are categorized as products in a plurality of primary location related product categories (e.g., see page 28, lines 1-16) with the products in each primary location related product category being in a related primary location area of the shopping area (e.g., see page 28, line 18 to page 29, line 3).

Products in each primary location related product category are in turn classified in a plurality of secondary location related product categories (e.g., see page 29, lines 4-9), with the products in each secondary location related product category being in a related secondary location area (e.g., see page 29, lines 10-12). Products in at least some of the secondary location related product categories are in subcategories of a related one of the secondary location related product categories (e.g., see page 29, lines 13-21). A substantial portion of the products in at least some of the primary location related product categories are brand name products with an overall brand name product appearance including the brand name and any packaging and/or graphic representations (e.g., see page 29, line 24 to page 31, line 7).

A substantial portion of products located in each of the aisles of the store facility are location related to other products in that aisle, as location related products in a manner that one location related product at a particular location in an aisle would indicate a probability of other products that are location related to the one location related product would be in that

aisle and as a possibility in closer proximity to the one location related product (e.g., see page 6, line 26 to page 7, line 11).

The combination includes a plurality of display signs, each of which is located in, or proximate to, a related aisle, or positioned so as to be associated with the related aisle in a manner that each display sign is visible so that a shopper observing the sign is able to associate the sign with its related aisle and the products within that aisle (e.g., see the diamond shaped items in Figure 2 and Figures 3-5A and 11A-11L).

Each of the display signs have a plurality of different brand name product representations of products which are representative of other location related products in its related secondary location related product category or categories or subcategory or subcategories in its related aisle (e.g., see page 35, lines 1-11), with the brand name product representations that are on the display sign being representative of a greater number of other products which are in the aisle associated with that display sign so as to be present along a substantial length of the aisle, and which are not on the display sign and are generally associated by location with the brand name product representations that are on the display sign (e.g., see page 35, lines 11-19). The brand name product representations on that display sign have an overall brand name product appearance including the brand name and any packaging and/or graphic representations and provided in at least one group in proximity or overlapping relationship to one another, and, with a substantial portion of the brand name product representations on the display sign comprising trademarks, which are registered in the U.S. Patent and Trademark Office (e.g., see Figures 3-5A and 11A-11L and page 31, line 10 to page 32, line 12).

The number of brand name product representations in the display signs is at most a relatively small fraction of the number of location related products in the aisle that is associated with that display sign, with a substantial portion of the brand name product representations on the display sign having a direct relationship to the brand name product which it shows and an indirect relationship as being location related to other products in that aisle (e.g., see page 35, lines 1-19).

The display signs are positioned at a substantial number of the aisles so that a customer in the shopping area would be able to observe the display signs and associate with each display sign and its related aisle the more numerous various location related products (e.g., see the diamond shaped items of Figure 2 and Figures 3-5A and 11A-11L).

A customer is able to observe individual display signs and by observing a much smaller number of brand name product representations on each display sign to be able to obtain location information of not only the products which are the same as the brand name product representations on the display sign, but also of a substantially greater number of related products which are in that aisle and of which the displayed brand name product representations are representative (e.g., see page 35, lines 1-19), and also the customer is able to become more familiar with product locations in the aisles by means of the customer associating the display signs as a memory aid of aisle locations (e.g., see page 32, lines 13-27 and page 33, lines 12-20).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The single ground of rejection to be reviewed on appeal is as follows:

Claims 17-27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ramey (U.S. Patent No. 5,297,685; hereinafter “Ramey”) in view of Begum et al. (U.S. Patent No. 6,012,244), Porter et al. (“The influence of brand recognition on retail store image,” The Journal of Product and Brand Management, Santa Barbara, 1997, vol. 6, No. 6, page 373, hereinafter “Porter”) and the Examiner’s Official Notice.

VII. ARGUMENT

The rejection of claims 17-27 under 35 U.S.C. § 103(a) as allegedly being obvious over Ramey, Begum, Porter and the Examiner’s Official Notice should be reversed.

Independent claim 17

It is respectfully submitted that the rejection should be reversed at least because neither the applied prior art nor the articulated reasoning by the Examiner would have

rendered obvious the combination of each and every claimed feature. More particularly, none of the applied documents, nor the Official Notice taken, describe, imply, suggest or even hint at “a plurality of different brand name representations ... provided in at least one group in proximity or overlapping relationship to one another,” as claimed.

Primary Reference to Ramey (US 5,297,685)

Starting with the applied primary reference to Ramey, this patent is directed to an indexing system in which every single piece of “moulding” in a store aisle is identified. In setting forth the rejection, the Examiner emphasizes Figures 6 and 7 of the Ramey patent, which depict an embodiment “display system A.” As described starting at column 8, line 7 of Ramey, display system A includes one or more “room scene signs G.” The room scenes (i.e., items 72 and 74) include “color indicators 80” that are described in a legend 78, which also is included on the sign G. The color indicators 80 are provided on moulding depicted in the room scenes and the legend includes a correlation between the colored indicators and a description of a style of moulding, such as “Window & Door” – Red, “Corner & Ceiling” – Blue etc. In lines 60-63, Ramey states, “Using the group signs D and the article locators E a consumer can readily determine the location on the support member B of the particular moulding he or she wishes to purchase.”

Thus, like the embodiments of Ramey’s Figures 1-5 previously relied upon by the Examiner, display system A depicted in Figures 6 and 7 does not suggest anything with regard to claimed features related to each of a plurality of display signs having “a plurality of different brand name representations ... provided in at least one group in proximity or overlapping relationship to one another,” as recited in independent claim 17. Rather, like the embodiments of Figures 1-5, a customer identifies a particular molding and proceeds to a color-coded sign having the same color as the group including the identified molding. Thus, the basic problem addressed by Ramey’s system A of Figures 6 and 7 is essentially the same as pointed out in the paragraph spanning pages 11 to 12 of Appellant’s response of September 21, 2007, which is to provide an indexing type system where this person can find a specific item rather easily without having to consult the sales personnel on the floor. The indexing system of Ramey provides color-coded items that link a general type designation

description on one sign (e.g., Window & Door) to another description having more detailed listing of mouldings (e.g., ranch casing, colonial casing etc.).

The Porter Document

The Porter document does not discuss or suggest anything whatsoever about display signs, much less “a plurality of different brand name representations ... provided in at least one group in proximity or overlapping relationship to one another” on each of a plurality of display signs, as claimed. The title of the Porter Document (i.e., “*The Influence Of Brand Recognition On Retail Store Image*”) exactly characterizes this article. The article is not about how to help a person find his way through the store and know where the products are. Rather it discusses how the store itself should select its brand names and conduct its advertising to ensure “a favorable store image.” More particularly, the abstract of this Porter Publication, which appears on the first page, reads as follows:

This article investigates the relationship between brand characteristics - awareness level and image - and their influence on consumers' perceptions of retail image. The article proposes a model of relationships between the number of recognizable brands carried by a retail establishment, the presence/absence of an anchor brand, and perceptions of retail image. The article presents the analysis and results of a study designed to test the model. In addition, the article develops and tests a measure of retail store image. It is indicated that one tactic for ensuring a favorable retail store image is a merchandise mix composed of a relatively high number of brands possessing high brand awareness, and one or more brands with a strong brand image. The article offers recommendations for both brand and retail managers.

As can be seen from the above, this article has nothing to do with the aim of the present invention of helping people find their way through a store and having better “memory hooks” as to where products are in the aisles of the stores. While the article does talk a lot about brand name products, it does not deal with how brand name products could be displayed in aisles of the store to give the shopper information about what is in those aisles. Therefore, if someone were looking for ways to make it easier for the person to get around the store, and if he happened to look at this title of the article, he would probably pass over it very lightly, or not look at it at all.

With respect to the treatment of Porter on page 8 of the Office Action, the Examiner

first cites passages from the abstract of Porter regarding ensuring a favorable image by having a mix of merchandise composed of a relatively high number of brands possessing high brand awareness and one or more brands with a strong brand image,” Porter describes how a store carrying more than one “anchor brand” enhances a customer’s perception of that store’s image. As pointed out above, however, none of these citations have anything to do with “a plurality of different brand name representations ... provided in at least one group in proximity or overlapping relationship to one another,” on each of a plurality of display signs associated with a store aisle to give a shopper information about what is in that aisle.

Porter is simply too general and does not mention anything whatsoever regarding signage, much less use of brand name representations on signage associated with a store aisle. Accordingly, there is nothing in Porter et al. that would have taught or suggested modifications of Ramey that would be needed to arrive at the feature related to a plurality of brand name representations on a display sign, as recited in independent claim 17.

Begum et al. (US 6,012,244)

With the Ramey and Porter documents having been discussed above, Begum, et al. will now be discussed to see how one of ordinary skill in this art would view Begum in view of Ramey and/or Porter. Looking at the introductory portions of the Begum patent, starting at line 5 of column 1, one can arrive at an idea of what the invention is about. It reads as follows:

This invention relates to the field of retail marketing and in particular to an electronic, product promotional device. The product promotional device of this invention is a shelf-mounted display sign with a mechanical shelf clip connected to a vertical battery canister that has a bracket with a flexible flap that provides a sign board for an advertisement or product promotion. The canister includes one or more lights to attract the shopper’s attention and preferably includes circuitry for a preferred embodiment as a trigger unit for a shopping cart display.

Also see, column 2, lines 12-27. Begum also shows a single sign advertising a particular juice product, with the light going on and off. The inventive part of this patent is the particular way they mounted this on a shelf, various hardware, electrical connections, etc.

Although the Begum patent shows a company name in Figure 1, which may or may not be a “brand” (i.e., “ACME FLA Orange Juice”), Begum fails to reasonably suggest selecting “ACME FLA Orange Juice” as the sign display for the given product group based in its brand name recognition. Furthermore, Begum does not mention or even hint at a display sign provided with “a plurality of different brand name representations ... provided in at least one group in proximity or overlapping relationship to one another,” as claimed. Additionally, Begum does not describe, infer or imply the claimed features of brand name representations representative of a greater number of other products, which are in the aisle associated with the display sign so as to be present along a substantial length of the aisle.

The Final Office Action

The conclusory statement by the Examiner asserting it would have been obvious to modify the display of Ramey to include brand graphic representation and brand packaging of products, at lines 2-6 of page 8 of the final Office Action, is it not supported by evidence from the prior art or any articulated reasoning by the Examiner.

The final Office Action newly takes the following Official Notice:

[I]t is notoriously well known in the art of grocery retail for grocery items to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products with are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks with [sic] are registered in the U.S. Patent and Trademark Office to sell a wide array of foods and drugs and to provide companies with brand name protection. (See, page 8, lines 16-22.)

Official Notice Taken by the Examiner

With respect to the Official Notice taken, Appellant does not dispute that a grocery retail store would have included one or more of frozen food products, refrigerated food products, food products with are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks that are registered in the U.S. Patent and Trademark Office. However, the mere fact that a retail store would have a large number of brands says nothing regarding the claimed features of a display sign

provided with a plurality of different brand name representations in at least one group in proximity or overlapping relationship to one another, with these brand name representations being representative of a greater number of other products that are in the aisle associated with the display sign so as to be present along a substantial length of the aisle, as claimed.

On page 9 of the final Office Action, the Examiner alleges that it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey and Begum to sell grocery products with brand names, brand appearance, brand graphic representation and brand packaging to sell a wide array of foods and drugs and to provide companies with brand name protection. However, there is simply no suggestion whatsoever in Ramey, Porter, Begum or the Official Notice that would have led one of ordinary skill in the art to place a plurality of different brand name product representations of products on each of a plurality of display signs, as recited in independent claim 17, even if Begum is considered along with Porter and the Office's Official Notice. Rather, Ramey and Begum appear to *teach away* from the modifications suggested by the Office, and Porter and the Official Notice taken do nothing to remedy this deficiency.

Pages 17 and 18 of Appellant's Reply Dated September 21, 2007

As pointed out on pages 17 and 18 of Appellant's reply dated September 21, 2007, it would appear counter-intuitive and against common sense to include "a plurality of different brand name product representations of products ... provided in at least one group in proximity or overlapping relationship to one another" on the type of sign described in Begum, to infer the locations of products associated with the plurality the brand representations. That is, why would one of ordinary skill in the art be led to provide more than one brand representation on a single rail sign to infer respective locations of products associated with the brand name representation with using small sign at a specific location along the display's price rail? The answer is that they would not. According to Begum, the display sign 10 is of relatively small size to avoid contact with shoppers perusing an aisle (see Begum, the paragraph spanning columns 1 to 2). It would appear unreasonable to assume that one of ordinary skill in the art would consider including a plurality of different brand name representations of products on such a small display sign attached to a display price rail.

Instead, it would appear one of ordinary skill in the art practicing common sense would deploy a plurality of such rail signs - one for each product - and that each such sign would correspond to one product at a location proximal to that product.

Thus, the suggested modification of Ramey to include the claimed features including, *inter alia*, a plurality of different brand name representations of products on each of a plurality of signs, is neither described, suggested or even hinted at in the in either of Begum, Porter, the Official Notice taken, or in any combination of thereof with Ramey. Nor would such modifications been reasonably considered within the common sense of one ordinary skill in the art. Accordingly, the rejection improperly imports only what the Appellant has taught to bridge the gap of claimed features missing from the applied documents.

Ramey Teaches Away from the Claimed Invention

Earlier in this text it was stated that there were three very important features in this application, and one of these is that there are display signs at each of the aisles which display only a small fraction of the products in that aisle so that there is a large number of other products which are related products which would be assumed as being likely in that same aisle.

This limitation appears in paragraph “f” in claim 17, as follows:

“f) the number of brand name product representations in the display signs being at most a relatively small fraction of the number of location related products in the aisle that is associated with that display sign, with a substantial portion of the brand name product representations on the display sign having a direct relationship to the brand name product which it shows and an indirect relationship as being location related to other products in that aisle; and”

During the prosecution of the application, the claims were being rejected on the basis of Ramey. This is clearly a bad mistake. Actually, the Ramey patent teaches totally away from the claims of the present application.

The main aim of the Ramey patent is to provide a system where there are a large number of moldings, and the location of every single molding is shown on a large display board showing the molding and its name. Directions as to where each molding is located are given through a coding system with different colors as to where each of the moldings are located. With Ramey, it is hard to imagine any system which is further away from the product display system in the present application.

This is not simply an insignificant matter. As indicated above, the heart of the present invention includes a first feature that is the actual layout of the supermarket (i.e., grocery store) where the products are most always arranged in a way where similar or similar category products would be in the same or adjacent aisles, and a second feature that is to display signs with only a sampling of the products. This gives the customer the “memory hook” which is needed. In summary, Ramey teaches a system that is far away from the claimed invention, and it would be disastrous to the fundamental teachings of Ramey to modify Ramey in order to make the display signs similar to what is claimed.

The Second Declaration of Paul Enfield

In addition to the above, Appellant submitted evidence presenting objective indicia of nonobviousness on July 17, 2008, in a Second Declaration of Paul Enfield Under 37 C.F.R. § 1.132 (see, Attachments A and A in the Evidence Appendix). This Second Declaration describes unexpected results that were obtained during a case study of the claimed invention, which is shown in Figure 16 and page 40, line 19 to page 43 of the original specification. In particular, section 7 on page 2 of the Second Declaration pointed out that the one store in the study utilizing the claimed signs showed a relative sales increase of over 35% for products having their brand name representations pictured on the signs.

The Examiner’s Response to the Second Declaration

The Examiner considered the Second Declaration and asserted the declaration failed to show clear evidence of unexpected results sufficient to overcome the rejection of the claims because the study on which the declarations are based is not included (see, page 14, lines 8-10 of the final Office Action). Additionally, the Examiner appeared to suggest that

the evidence supplied with the declarations is not within the scope of the claimed subject matter (see, page 14, lines 11-18). More specifically, the Examiner asserted that the results of increased sales may be linked to many other variables outside the specifically claimed signage within the store, and that the amount of the increase in brand name sales has not been proven to exceed well known targeted point of sale advertising (such as simply displaying a “coke” advertisement above an aisle). In response to these expressed concerns, Appellant submitted a Third Declaration of Paul Enfield Under 37 C.F.R. § 1.132 on April 7, 2009 (see, Attachment B in the Evidence Appendix).

The Third Declaration of Paul Enfield

In the Third Declaration, Appellant explained at length the details of the study yielding the unexpected results, how the results were obtained, and why the magnitude of the results of increased sales in dry goods should be considered unexpected. The declaration also explains *inter alia* that the figures of present application include photographs of aisles of the actual store used in the study, and that the store, store aisles (i.e., dry goods aisles) and signs shown in these photographs are commensurate with the subject matter recited in pending independent claim 17. It is respectfully submitted that this Third Declaration of Mr. Enfield adequately addresses the Examiner’s concerns regarding the variables identified in the final Office Action, and further explains that no other variables existed outside the signage within the store that could reasonably be considered significant to the study, or would have any significant effect on the study’s results. Furthermore, the declaration explains that the 34 stores in the study other than the store with the claimed signage (i.e., the East Wenatchee store) used signs showing only text product descriptions, which are equivalent to the industry standard, did not employ the claimed signage, and that all 35 stores in the study used common pricing, advertising and product mix as they are placed on the shelves.

The Examiner’s Response to the Third Declaration

The Examiner provides comments regarding Appellant’s Third Declaration on page 2 of the Advisory Action dated April 13, 2009. More particularly, in lines 1-5 the Examiner expresses concern that sales may be tied to a seasonal time of year may have affected sales of

the dry goods, such as baking goods during the winter and holiday time of the year, and caused an increase in the sales of such items. However, it is respectfully submitted that any such seasonal increase in sales also would have been reflected in other stores participating in the study, and thus would have resulted in substantially the same relative sales among the stores.

Also, in lines 5-7 of the Advisory Action, the Examiner suggests providing expected sales increases from having just a typical advertising poster in a store, such as the increased sales due to having a “Coke” banner located near the soft drink aisle, in order to show that the increased sales are due to the directory having logos on it and not only standard localized store advertising. However, as explained in Section 12 on page 5 of Appellant’s Third Declaration, all 35 stores in the case study used common pricing, advertising and product mix as they were placed on the shelves, except for the three month period during the six month study in which signs according to the claimed invention were installed in the East Wenatchee store. Hence, the baseline used in Appellant’s study is considered to be the closest prior art, i.e., use of standard advertising and signage with generic textual listings. Furthermore, the over 35% relative increase in sales of the dry goods items having representations displayed on the signs (i.e., [45.1% for the trial store] - [9.4% average increase for the 34 other stores] = 35.7%, see Figure 16 on page 6 of the Third Declaration) clearly shows the effectiveness of using the claimed signs versus not using the signs.

As explained in Section 17 of the Third Declaration, in an industry where fixed costs are high, margins are very slim, and profits generally only are 1% to 2% of sales, an increase in sales of over one-third for products representing over one-sixth of the entire dry grocery department is huge, and was completely surprising and unexpected. For these additional reasons, the claimed combination of a plurality of display signs and a store facility set forth in independent claim 17 is unobvious.

Each of claims 18-27 depend from independent claim 17 and are therefore also allowable at least for the above reasons, and further for the additional features recited.

Accordingly, it is respectfully requested that the rejection of claims 17-27 under 35 U.S.C. § 103(a) be reversed.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

The following is a complete list of all claims on appeal:

17. A combination of a plurality of display signs and a store facility, with the combination being particularly adapted to assist customers to locate products in the store facility and to obtain greater familiarity of an overall pattern of product location in the store facility, said combination comprising:

a) a store facility having a shopping area in which store products are made available to customers in the shopping area, said shopping area being arranged in a plurality of elongate aisles having first and second aisle end portions;

b) a substantial portion of the store products located in the aisles being brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where said store products are categorized as:

i) products in a plurality of primary location related product categories with the products in each primary location related product category being in a related primary location area of the shopping area;

ii) products in each primary location related product category which are in turn classified in a plurality of secondary location related product categories, with the products in each secondary location related product category being in a related secondary location area;

iii) products in at least some of said secondary location related product categories being in subcategories of a related one of the secondary location related product categories;

iv) a substantial portion of the products in at least some of the primary location related product categories being brand name products with an overall brand name product appearance including the brand name and any packaging and/or graphic representations;

c) a substantial portion of products located in each of the aisles being location related to other products in that aisle as location related products in a manner that one location related product at a particular location in an aisle would indicate a probability of other products that are location related to said one location related product would be in that aisle and as a possibility in closer proximity to said one location related product;

d) a plurality of display signs, each of which is located in, or proximate to, a related aisle, or positioned so as to be associated with said related aisle in a manner that each display sign is visible so that a shopper observing the sign is able to associate the sign with its related aisle and the products within that aisle;

e) each of said display signs having a plurality of different brand name product representations of products which are representative of other location related products in its related secondary location related product category or categories or subcategory or subcategories in its related aisle, with the brand name product representations that are on the display sign being representative of a greater number of other products which are in the aisle associated with that display sign so as to be present along a substantial length of the aisle, and which are not on the display sign and are generally associated by location with the brand name product representations that are on the display sign, said brand name product representations on that display sign having an overall brand name product appearance including the brand name and any packaging and/or graphic representations and provided in at least one group in proximity or overlapping relationship to one another, and, with a substantial portion of the brand name product representations on said display sign comprising trademarks which are registered in the U.S. Patent and Trademark Office;

f) the number of brand name product representations in the display signs being at most a relatively small fraction of the number of location related products in the aisle that is associated with that display sign, with a substantial portion of the brand name product representations on the display sign having a direct relationship to the brand name product which it shows and an indirect relationship as being location related to other products in that aisle; and

g) the display signs being positioned at a substantial number of said aisles so that a customer in the shopping area would be able to observe the display signs and associate with each display sign and its related aisle the more numerous various location related products;

whereby a customer is able to observe individual display signs and by observing a much smaller number of brand name product representations on each display sign to be able to obtain location information of not only the products which are the same as the brand name product representations on the display sign, but also of a substantially greater number of related products which are in that aisle and of which the displayed brand name product representations are representative, and also the customer is able to become more familiar with product locations in the aisles by means of the customer associating the display signs as a memory aid of aisle locations.

18. The combination as recited in claim 17, further comprising at least one store directory which is visible to customers in the shopping area, said store directory listing identifying names of products, with some of the identifying names also having a brand name product representation which is within the scope of the names of the products listed in the directory.

19. The combination as recited in claim 17, wherein there is also at least one display direction sign indicating a direction to a store location or locations and providing identification of the store location or locations by means of a brand name product representation of a brand name product or products that is representative of product or products in that store location or locations.

20. The combination as recited in claim 17, wherein there is at least one store directory which comprises a representation of the shopping area showing various product locations in the shopping area and identifying at least a portion of said product locations by brand name product representations of products to be found at said product locations.

21. The combination as recited in claim 17, wherein there is a plurality of store directories which are representative of the shopping area showing various product locations in the shopping area and identifying at least some of these product locations by brand name product representations of specific products representative of products to be found at that product location, said store directories being printed on a substrate that is portable manually so as to be able to be given as handouts for store information and/or for advertising and/or other purposes in conveying information on the store facility.

22. The combination as recited in claim 17, wherein there are category signs at spaced locations along at least some of said aisles displaying brand name product representations which are more specific to product categories at said spaced locations along at-least some of said aisles.

23. The combination as recited in claim 22, wherein said at least one aisle of said at least some of said aisles, is an aisle at which frozen products are present and located in freezers cabinets.

24. The combination as recited in claim 23, wherein the products of said store facility also include drug store products, and said category signs are at spaced locations in a section of the shopping area where the drug store related products are located.

25. The combination as recited in claim 17, wherein at least some of said display signs have in addition to the brand name product representations a word or words identifying products and/or categories of products at that related aisle combination.

26. The combination as recited in claim 25, wherein said store facility has existing display signs at access regions which display a word or words identifying products and/or categories of products at the access region and the display signs with the brand name product representations are in addition to the word or words that are displayed.

27. The combination as recited in claim 17, wherein there are other display signs in the shopping area which display text identifying products and/or product categories, and these are in addition to said display signs with the brand name product representations.

IX. EVIDENCE APPENDIX

Second Declaration under 37 C.F.R. § 1.132 of Paul Enfield is attached as Exhibit A. Page 14 of the October 9, 2008, final Office Action indicates that the Examiner entered into the record and considered this Second Declaration.

Third Declaration under 37 C.F.R. § 1.132 of Paul Enfield is attached as Exhibit B. Item 10 of the Advisory Action dated April 13, 2009, indicates the Examiner entered into to record and considered this Third Declaration.

X. **RELATED PROCEEDINGS APPENDIX**

(None)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	Confirmation No.: 9260
Paul S. Enfield)	
Serial No.: 09/902,923	)	Examiner: Elaine L. Gort
Filed: July 10, 2001	)	Group Art Unit: 3627
For: INFORMATION, DIRECTORY,)	
LOCATION AND ORIENTATION)	
SYSTEM FOR RETAIL STORES AND)	
THE LIKE)	

SECOND DECLARATION OF PAUL ENFIELD UNDER 37 C.F.R. § 1.132

I, Paul S. Enfield, hereby declare:

1. I am the sole inventor of the above-identified application.
2. I am a consultant providing design and project management services for grocery construction projects.
3. I received a B.A. from the University of Washington College of Architecture and Urban Planning and also completed two years of graduate work.
4. I have over 40 years of experience in the grocery field to which the above-identified application relates.
5. I am familiar with the documents of Ramey (U.S. Patent No. 5,297,685) in view of Begum et al. (U.S. Patent No. 6,012,244, hereinafter "Begum") and Porter et al. ("The influence of brand recognition on retail store image," The Journal of Product and Brand Management, Santa Barbara, 1997, vol. 6, No. 6, page 373, hereinafter "Porter"), which are relied upon by the Examiner in making the rejection of claims of the above-identified application in the Final Office Action mailed on December 13, 2007.
6. The claimed subject matter describes a directory system that benefits both the customer and store operator. In a previous declaration by David Weber, who served as store

manager in a store testing the claimed directory system, Mr. Weber noted that my invention:

- was well appreciated by customers for being quick and easy to use,
- provided memory hooks that helped customers build a familiarity with the store, which increased customer retention, and
- was helpful for shoppers who could not read English or who had impaired sight, which increase sales to this market segment.

In a very competitive industry, these differentiators add to a store's convenience rating and significantly increase profitability.

7. The claimed subject matter also provides a significant benefit to a supplier shown on the signage. I participated in a study conducted after the opening of the first store using this directory system and as noted in our original patent application. In that store, for the three months after signs according to pending independent claim 17 were installed, sales of products having their brand name representations pictured on the signs and sales of related products carrying the same brand showed relative sales increases averaging over 35%, when compared with stores of the same chain not using the signs. Not only was this increase itself significant, but its sheer magnitude was totally unexpected in an environment in which competitive advantages are commonly measured in low unitary amounts.

8. Ramey describes a very useful indexing system, but it does not lead one to an application for a store directory, much less still the claimed combination of a plurality of display signs and a store facility utilizing a plurality of brand name product representations of products. Consider the uses of each system:

	Ramey	Enfield
Purpose	Functions as an index, helping a user to discriminate among all available products.	Functions as a directory, helping users to locate general categories of products.
Quantity	Shows all products in a category to illustrate differentiation.	Shows only a few representative products, usually fewer than 1%.
Representation	Show diagrammatic cross-sections of actual materials.	Shows full visual of the packaged containing a product in the form of a brand name product representation.
Use of brand logos	Relies on generic names of most moldings.	Relies of easily identified packaging, which features logos.
Area of use	Limited to a display of bulk commodities such as moldings and other related mill work.	To maximize the value to the customer as a complete system, it is used throughout the store.
Time of interaction	Many minutes as the user compares and contrasts products in making a selection.	Frequently less than a second as a shopper scans signs and understands the categories available in an aisle.

9. The claimed subject matter, furthermore, is not obvious, even to others closely involved in the industry. Those working in large national businesses are so specialized that they generally are not focused on the interaction between various departments. An understanding of the benefits of this system requires involvement of marketing, store operations, and store development and facilities. In large companies this interaction on a granular level is very difficult and therefore highly infrequent. Conversely, in smaller regional operations, staff and owners rarely take the time necessary to identify such opportunities.

10. The claimed subject matter, therefore, not only satisfies a long-felt need by making grocery shopping just a little easier, but also has proven to be profitable for both the

store operator and the supplier of the products illustrated on the signs.

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: July 11, 2008

Paul S. Enfield
Paul S. Enfield

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	Confirmation No: 9260
Paul S. Enfield)	
Application No. 09/902,923	)	Examiner: Elaine L. Gort
Filed: July 10, 2001	)	Group Art Unit: 3687
For: INFORMATION, DIRECTORY,)	
LOCATION AND ORIENTATION)	
SYSTEM FOR RETAIL STORES AND)	
THE LIKE)	

THIRD DECLARATION OF PAUL ENFIELD UNDER 37 C.F.R. § 1.132

1. I, Paul Enfield, having a home address of 3320 Oregon Place, Bellingham, WA 98226, state the following. I am the applicant in the above-identified patent application.
2. I have been involved in the grocery business for 45 years, working with both national and regional chains. For the decade of the 1980's I had the opportunity to lead a food store that we built up to the highest sales volume store in the state of Washington. As the only store in our company of this format, we orchestrated all merchandising, marketing and pricing at the store level. In subsequent years I directed operations of a group of stores; managed labor and operations expenses; and facility design, construction and operations for a 36 store regional grocery chain. This broad grocery background layered on my architectural education made me uniquely positioned to discover the extremely beneficial elements of this invention. From my experience I have a deep understanding of the economics of the grocery business, profit margins,

and all financial aspects of operating a grocery store, or a chain of grocery stores.

Accordingly, I believe I am fully capable of accurately making the following statements.

3. Based on my years of experience in the grocery business, I have arrived at the following general explanation of the economics of a grocery store.

- i. The average grocer nets profit of 1% to 2% of sales
- ii. It takes the gross profit on the first 80% of the sales to cover the fixed expenses.
- iii. It is on the remaining 20% of sales that the profit is made;
- iv. A store that makes a profit 5% on the last 20% of sales, nets an overall profit of 1% of sales.

4. The most common way of drawing customers into the store is to have a sale on certain products where the product(s) on sale is/are sold at a reduced cost. The hope is that the customer will come into the store to purchase those particular products that are on sale and also buy other products in the store since the customer is already in the store.

5. When the concept of the claimed signage system was well defined, we conducted some consumer response studies and found that the system was well received by customers who found shopping easier with the aid of these directories. However, to point out a benefit to grocers and product providers, we thought it would be beneficial to conduct a test to track the impact on actual sales. The following half year trial was laid out.

6. The products that are on sale are often sold at a loss, and if there is any increase in net profits it is from the increase of sales from the other products within the store. In many instances the store manager feels that on balance he would have been better off

without the "on sale" products because increases in sales of the other products do not offset losses of the "on sale" products.

7. In the final three months trial period of operation of the East Wenatchee store, with the display signs provided in a store facility in accordance with the independent claims of the present application, the increase in sales of these displayed product lines and other brand names associated therewith, was a clear 45%. Moreover, an important aspect of this which to be emphasized is that the price of the products displayed on the signs remained the same as the current shelf price. Therefore, this total 45% amount has the full profit margins without any additional "on sale" losses. This was truly extraordinary, and had a great benefit on both total sales and profit margin. These results were not only "completely unexpected," but I could state it more strongly as being very pleasantly surprising.

8. In response to the Examiner's statements, starting on line 6 of page 14 of the final Office Action dated October 9, 2009, regarding prior declarations by me and David Weber failing to show clear evidence of unexpected results, and that , I submit the following:

9. When I first started this venture, I engaged the cooperation of some people in an organization to undergo a case study by actually implementing the system in a grocery store in a fashion so that we could make comparisons. The test store was selected for a number of reasons. The market was very stable with very little in or out migration during the period of the test. Furthermore, with its agricultural base, the late fall and winter for the period to test the new signs was selected because of the minimal

influence of seasonal work. There were no outside factors that would have been expected to have any significant effect on the subject of this test. My associates and I were optimistic that the present patent application would prove to be beneficial, mainly because it would make grocery shopping easier for the customer, but when the test results were tabulated, we saw another result which I might call a significant "bonus," which was completely unexpected for all of us, and added another segment of the market that also benefitted from applying the system.

10. In a nutshell, it was found that not only did this make shopping more efficient and pleasant for the customer, but there was an unexpectedly large increase in sales which was well beyond what any of us had expected.

11. We conducted an extensive study, tracking the sales of all "dry grocery" (non-refrigerated) products in the entire 35 stores of the chain for an entire half year.¹ We tracked total sales for the 13 weeks prior to the installation of the new signs and then compared this with sales of the same products for the 13 weeks following the installation of the signs. In addition to tracking all dry grocery sales, we focused on sales of the portion of the products shown on the signs and that carried the same brand name as products shown and were merchandised in the same aisle as the signs. The sales in the 34 stores without the signage system were used as a baseline on which to measure the effects of the claimed invention.

¹ The term "dry grocery" is an industry term used to describe the largest category of grocery sales, and includes all non-refrigerated products except for beer, wine and general merchandise, such as non-edible seasonal products and health and beauty aids.

12. To explain this further, the store where the signs were installed for the six-month case study is in East Wenatchee in the state of Washington, with this case study store being only one store among 35 stores which are operated by the same owner. All of these 35 stores used common pricing, and advertising and product mix as they are placed on the shelves. Therefore, these other 34 stores (along with the East Wenatchee store) provide a proper baseline for measuring the statistical data that was taken. Also, no changes occurred in the test market location that could be considered "other variables," such as those listed by the Examiner, which would have significantly affected the resulting data. For instance, population count and demographic mix was stable, as was the local economy.

13. The aisle directory signs shown in the photographs in the patent application are the actual signs used during the study. The aisle directory signage in the 34 other baseline stores was equivalent to the industry standard, showing only text product descriptions, which is believed to be the closest prior art with respect to the claimed subject matter.

14. Also, it should be noted that these comparisons were being made by tracking the same products using the same methodology in all of these 35 stores. It was anticipated that featuring the brand named products on the signs could have a direct sales effect on the products shown on the display sign, but could also have some indirect effect on the sales of other adjacent products carrying the same logo. So we studied not only the approximately 100 dry grocery items shown on the signs, but also the others carrying the same logo. For example, if the sign featured a Betty Crocker yellow cake mix, sales

of Betty Crocker fudge cake mix would also be tracked as an associated product, and furthermore sales of Betty Crocker frosting mixes would also be tracked as associated

15. Figure 16 of the application, reproduced below, depicts the summation of these tabulations of sales

**Products Shown on Directories
As a Percent of Dry Grocery Sales**

Date Range	Illustrated Product Sales Vs. All Category Sales	
	Other 34 Stores	Trial Store
3 Months Before Installation		
12-Jul-00 - 10-Oct-00	17.8%	16.9%
3 Months After Installation		
11-Oct-00 - 09-Jan-01	19.5%	24.5%
Change (Increase)	9.4%	45.1%

Figure 16

Figure 16 shows the percentage of total dry grocery sales that are made up of products and associated products of the same brands as shown on the signs. The left column of percentages shows the represented percentages in the other 34 baseline stores. This illustrates that in the baseline stores with no changes in directory signs, the percentage of sales change of products associated with the signs changed from 17.8% of total dry

grocery sales to 19.5%, or an increase on 9.4% (i.e., $(19.5\% - 17.8\%) \div 17.8\% = 9.4\%$, before rounding) between the two three-month periods. The right column shows the sales in the store where the signs were tested. In the three months before the signs were installed products later associated with the signs accounted for 16.9% of dry grocery. However, in the three months after the signs were installed, the percentage of products associated with the signs jumped to 24.5%, or a totally unexpected and almost unbelievable increase of 45.1% (i.e., $(24.5\% - 16.9\%) \div 16.9\% = 45.1\%$), before rounding).

16. The same trade name products in generally the same arrangement of locations were present in the trial store as in the other 34 stores. In the trial store during the three months before the trial began, the percentage of products later associated with the signs differed only slightly from the average percentage of those products' sales in the other 34 stores. Now shifting to look at the last three months of the trial, when the claimed signs were used in the trial store, the sales of associated products jumped from 16.9% to 24.5%. The magnitude of the sales increase is shown by subtracting 16.9% from 24.5% and dividing by 16.9% (i.e., $(24.5\% - 16.9\%) \div 16.9\% = 45.1\%$), which is about 45.1%.

17. As stated in the earlier part of the text dealing with this subject, this result to me (as well as to the others engaged in this venture) was that the magnitude of this increase was entirely unexpected, and extremely significant. It could have been expected that there would be some increase sales in the products which are shown on the signs, but nothing of this magnitude. In an industry where fixed costs are high, margins are very

slim and profits generally only are 1% to 2% of sales, an increase in sales of over one-third for products representing over one-sixth of the entire dry grocery department is huge. Since these dry grocery categories generally contribute over a third of total store sales, and since these are incremental extra sales without any extra fixed overhead or marketing costs, this shift in sales could easily contribute over a 10% increase in net profit. The result was substantially improved profits for both the retailer and the product manufacturer or supplier. This magnitude of sales increase for this large grouping of products was not only extraordinary, but completely unexpected.

18. These results benefit: the manufacturer of the displayed products because there is increased sales of their products; the store itself because it has an increase of 45% in the sales of the products, and all of this 45% added in sales is in the last 20% from which the store derives its profits; and the customer because he or she is better able to move through the store to shop in a convenient and efficient manner, and much more likely to be prompted to buy everything the customer needs, rather than only what the customer is specifically looking for.

19. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: April 7, 2009

Paul S. Enfield
Paul S. Enfield